



*San José Police Department*

August 28, 2013

David Parker, Chair  
San José Appeals Hearing Board Commissioners  
San José Appeals Hearing Board  
200 E. Santa Clara Street  
San José, CA 95113

Re: Appeal of Suspension of Motif's Entertainment Permit  
Date: September 12, 2013  
Time: 6:30 p.m.  
Location: San José City Hall  
City Council Chambers  
200 E. Santa Clara Street

Hon. Commission Members,

Motif Lounge (Motif) appeals from Deputy Chief Hober's Decision to uphold the San José Police Department's intended decision to suspend its Entertainment Permit for a period of fourteen (14) days. This Board must uphold Chief Hober's decision if substantial evidence supports the decision. Chief Hober's decision is carefully reasoned and based upon his review of more than two hours of testimony. His decision must be upheld.

#### I. INTRODUCTION AND STATEMENT OF THE FACTS.

As stated in the Notice of Decision, Motif holds an Entertainment Permit issued by the San José Police Department.

##### A. The permitting system.

Public Entertainment Businesses are licensed under San José Municipal Code, Chapter 6.60. The operation of the business requires licenses for the business itself, managers as well as promoters. The licensing and background is necessary to protect the safety and welfare of the patrons of the business. The licensed businesses must comply with rules regarding security, waiting lines, managers, occupancy and reporting requirements. (See, SJMC Sections 6.60.240, *et seq.*) The City also employs Downtown Entertainment Zone officers to provide increased protection for those enjoying the nightlife. (SJMC Section 6.60.400, *et seq.*) None of the City's efforts, however, will produce results if the businesses simply choose to ignore permit conditions as a cost of doing business. As explained below, MOTIF did just that.

B. Underlying Facts.

This case involves the activities of MOTIF and a promoter, Brandon Younger (Younger), for an event on May 17, 2013. The San José Municipal Code requires that a promoter either be licensed by the City, or that the permittee have a written contract with the promoter, and that the permittee agrees to be responsible for all of the conduct arising out of the promoter's activities or event. (SJMC §§6.62.200, 6.62.10.)

There is no dispute that Younger was promoting an event for MOTIF, and that Younger does not have a promoter's permit. On May 15, 2013, the police received a complaint that an unpermitted promoter was acting on MOTIF's behalf. Sgt. Trayer called both Ms. Nguyen and Younger to advise them that the event was not a permitted event. Ms. Nguyen advised Sgt. Trayer that the event would not proceed because she did not want to be in violation.

Nonetheless, on May 17, 2013, the event proceeded as planned. On June 13, 2013, the City issued Notice of Intended Action to suspend MOTIF's entertainment permit for a period of ten days.

C. Procedural History.

On June 13, 2013, the City provided MOTIF with the Notice of Intended Action. MOTIF timely requested a hearing. On July 24, 2013, Deputy Chief Hober presided over a two-hour hearing.

During the hearing, Chief Hober heard testimony from Sgt. Todd Trayer and Sgt. Rick Galea. Teresa Nguyen, owner of MOTIF, also testified. Richard Warren, Esq. represented MOTIF.

D. Chief Hober's Decision.

On August 9, 2013, Chief Hober issued his Decision. (SJAHB0005-12.) The Decision details the San José Municipal Code as well as the factual basis for his determination, after hearing the evidence. It concludes that a permit may be suspended or revoked for a violation of the San José Municipal Code or if the business operates as a nuisance. A business operated in violation of the Code is a nuisance. (SJMC §§1.13.050(A)(3); 6.60.370.)

In reaching this conclusion, the Decision sets forth the requirements of the San José Municipal Code and the evidence supporting the violation.

- i. The Decision correctly determines that Younger was an unlicensed promoter.

San José Municipal Code Section 6.62.040 defines an event promoter as someone who:

1. Is directly or indirectly responsible for the promotion of an event as evidenced by activities such as, but not limited to contracting with the principals, selecting entertainment, advertising or otherwise holding out the event to members of the general public, inviting participants to the event, renting or controlling the event site, or serving as a designated on-site representative while the event is occurring as provided in Section 6.62.350 of this chapter; and
2. In exchange for the promotion of the event, as described in Section 6.62.040A(1) directly or indirectly received or shares in any of the following:
  - a. Admission or entrance fees paid by the participants or spectators;
  - b. Compensation, consideration or other revenue from sponsors, private donors, managers and/or owners of the event site; or
  - c. Revenues from concessions or other sales or event.

(SJMC §6.62.040; Decision, SJAHB00007.)

The Decision first analyzes the question, did Brandon Younger meet the criteria as a promoter. (SJAHB0007 -8). In holding that Younger was a promoter, the Decision states that Younger directly or indirectly invited participants to the event. The Decision carefully analyzes the evidence, the text messages, in which MOTIF confirms the split from the door as well as booking a DJ and making a flier. (Decision, SJAHB00007)

The Decision states "based upon the Twitter, Facebook and Instagram Accounts (part of the SJPD General Offense Report and a stipulation by Mr. Warren) Brandon Younger continued to promote the event on May 17, 2013, after the discussions with Sergeant Trayer on May 15, 2013, to cease any further promotion." (Decision, SJAHB00007 - 8)

Based upon the testimony and evidence at the hearing, the Decision finds that text messages regarding Mr. Younger's "door girls" and the fact that two girls were present at the event are credible evidence that there was door revenue split between MOTIF and Younger. (Decision, SJAHB00009). The Decision further finds Sgt. Galea's testimony credible that promoters do not generally attend events unless they are making money from the event to be credible evidence that Mr. Younger's presence at the event supports a conclusion that Mr. Younger received consideration or revenue from the event.

This Decision is based upon careful analysis of the testimony presented to Chief Hober.

- ii. The Decision correctly determines that MOTIF is responsible for Younger's activities.

Chief Hober correctly rejected MOTIF's claims that it was not responsible for Younger's conduct at the club.

San José Municipal Code Section 6.62.360(B) provides:

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B. Each event promoter, and any other persons responsible for the operation of the event site, excluding the city, its agents, officers and employees, shall be jointly and severally liable for:

1. Any violation of this chapter;
2. Any violation of any other license or permit required for the event; and
3. Any violation of any other applicable law that arises out of the promotion of the event.

[SJMC § 6.62.360(B).]

The Decision correctly analyzes the testimony. Police officers arrived at the club in the early hours and found Younger on stage with a microphone. The police observed Younger and videotaped his conduct on stage.

Ms. Nguyen argued that she did not know that Younger was there. However, the text messages show an exchange between Ms. Nguyen and Younger to let him inside the back door.

Ms. Nguyen testifies that she did not instruct staff to deny him entry; because he was upset she had to cancel his party and that she would not be paying him.

In making a credulity determination, Chief Hober did not believe that Younger would have been in the club for at least 1 hour and 31 minutes (from the time of the text of officer's arriving or for 10:35 to 1:12 a.m., the second time officers arrived at the club. (Decision SJAHB00010)

Ms. Nguyen further claimed that it was her practice to file the documents necessary to have an exemption to the promoter ordinance. However, these documents were not provided to Sgt. Trayer, nor mentioned to him when he called and spoke to Ms. Nguyen and Younger about the event. (Decision, SJAHB00010)

The Decision cites to the May 16, 2013 text from Younger in which he states, "Teresa I got player Josh wants premium package, 2 Patron, 2 Hennessy and 2 rose." Teresa responds, "OK full price." She also states "Send me all the tables-book." (Decision, SJAHB0008) The Decision concludes that Younger is "still *inviting participants to the event* after being told by Sergeant Trayer not to promote and Teresa Nguyen acknowledged that Brandon Younger was continuing to solicit for the May 17, 2013 event." (Decision, SJAHB0008)

II. THE BOARD SHOULD UPHOLD THE DECISION BECAUSE IT IS BASED UPON SUBSTANTIAL EVIDENCE.

MOTIF had the benefit of a full evidentiary hearing, in which it was represented by Council and had the opportunity to present witnesses and evidence. San José Municipal Code Section 6.60.520(c), provides this Board's jurisdiction (or ability) to hear this matter. That section provides, in relevant part:

C. The appeal hearing before the board shall be conducted in accordance *with the rules and regulations of the board*, but shall be heard no later than thirty calendar days after the receipt of the appeal, or within the next two regularly-scheduled meetings of the board, whichever is later in time.

(Emphasis added., SJMC §6.60.520.)

In turn, the Rules of the Appeals Hearing Board provide as follows:

Section 405            Standard of Review

The Appeals Board shall not substitute its judgment for that of an administrative officer but shall insure that the determination fully and correctly considered all facts and legal requirements.

Section 406            Burden of Proof

A. ...

B. In such cases where the Appeals Hearing Board is hearing the appeal of an appellant from an intermediate administrative hearing officer pursuant to the Municipal Code, the burden of proof shall be on the appellant and the administrative officer's determination shall be upheld if it is based upon substantial evidence. "Substantial evidence" is evidence which a reasonable mind would accept as sufficient to support a particular conclusion. The appellant has the burden of demonstrating to the Board that there is no substantial evidence in the administrative record to support the decision of the hearing officer.

Board Resolution, 8-23.

Therefore, this Board's role is to examine the Decision to determine whether there is sufficient evidence that a "reasonable mind" would accept as the basis for a conclusion. Fortunately, the Board has the benefit of a detailed Decision citing the basis for the conclusions. The Decision should be upheld.

### III. CONCLUSION.

As the appellate body for this appeal, this Board must uphold the Decision if it is based upon "substantial evidence". In this case, the Board has before it a well-reasoned, detailed decision based upon the facts presented. It is clear that the Decision should be upheld.

Respectfully submitted,

*Sgt. Todd Trayer #3307*

Sgt. Todd Trayer

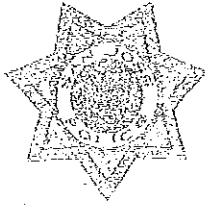
cc: Teresa Nguyen  
Motif Lounge  
Richard D. Warren, Esq. (Attorney for Motif)  
Kevin Fisher, Esq. (Attorney for Hearing Officer)

**MOTIF RECORD BEFORE APPEALS HEARING BOARD  
SEPTEMBER 12, 2013**

| Date                      | Description   | Bates Number    |
|---------------------------|---|-----------------|
| August 28, 2013           | Notice of Hearing Before Appeals Hearing Board  | SJAHB0001 - 3   |
| August 11, 2013           | Motif's Request for Appeal  | SJAHB0004       |
| August 9, 2013            | Decision of Hearing Officer relating to Teresa Nguyen dba Motif Lounge – Appeal of Suspension of Entertainment Permit, Hearing Date July 24, 2013 | SJAHB0005 – 12  |
| July 11, 2013             | Letter to Deputy Chief Hober  | SJAHB00013 -17  |
| July 25, 2013             | Letter to Teresa Nguyen re; Notice of Hearing before Chief Hober  | SJAHB00018 – 20 |
| June 13, 2013             | Notice of Intended Action (City's Exhibit "A")  | SJAHB00021 – 27 |
| June 14, 2013             | Motif's Request for Hearing   | SJAHB00028      |
| January 10, 2012          | Motif's Entertainment Permit  | SJAHB00029 – 39 |
| June 3, 2013 (print date) | Police Report   | SJAHB00040 – 54 |
| July 1, 2013 (print date) | Supplemental Report (City Exhibit "C")  | SJAHB00055      |
| May 15 – 16               | Motif Exhibit 1 – Text Messages   | SJAHB00056 – 58 |
|                           | Motif Exhibit 2 – Instagram Post  | SJAHB00059 – 60 |
| July 31, 2013             | Motif Exhibit 3 -   | SJAHB00061 – 71 |

**OTHER EXHIBITS and RECORD:**

City Exhibit "B" - Video of Event  
Audio of Hearing before Deputy Chief Hober



*San José Police Department*

August 28, 2013

Teresa Nguyen  
dba Motif Lounge  
389 South First Street  
San José, CA 95113

Richard Warren, Esq.  
Law Offices of Richard D. Warren  
929 Fresno Avenue  
Berkeley, CA 94707

Dear Ms. Nguyen:

The City of San José has received your Appeal from Deputy Chief Hober's Decision August 9, 2013 upholding the Suspension of Motif Lounge's Entertainment Permit.

The San José Municipal Code requires that your hearing be set within thirty calendar days of the receipt of the request for appeal, or the second regularly scheduled meeting of the San José Appeals Hearing Board. [San José Municipal Code Section 6.60.530c.] Your appeal is set for:

DATE: September 12, 2013  
TIME: 6:30 p.m.  
LOCATION: San José City Hall  
Council Chambers  
200 E. Santa Clara Street  
San José, CA 95113

Under San José Municipal Code Section 6.60.530, the hearing is conducted under the Rules of the Appeals Hearing Board (Rules). Under t Rule 402, the hearing is not conducted according to the rules of evidence. Any relevant evidence shall be admitted if it the type of evidence which responsible persons rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence is excluded.

This is your appeal from a determination by a hearing officer. Therefore, the burden of proof is on you to prove that the administrative hearing officers' determination is not based upon substantial evidence. "Substantial evidence" is evidence which a



reasonable mind would accept as sufficient to support a particular conclusion. The appellant has the burden of demonstrating that there is no substantial evidence in the administrative record to support the decision of the hearing officer. (Rule 406.)

If you have any questions or comments, please do not hesitate to call.

Very truly yours,

*Sgt. W.D. Trayer #3361*

Sgt. Trayer

1  
2 PROOF OF SERVICE

3 CASE NAME: Teresa Nguyen dba Motif Lounge

4 I, the undersigned declare as follows:

5 I am a citizen of the United States, over 18 years of age, employed in Santa Clara  
6 County, and not a party to the within action. My business address is 201 W. Mission  
7 Street, San José, CA, 95110, and is located in the county where the service described  
below occurred.

8 On August 28, 2013, I caused to be served the within:

9 NOTICE OF APPEAL HEARING

10 ☒ by MAIL, with a copy of this declaration, by depositing them into a sealed envelope,  
11 with postage fully prepaid, and causing the envelope to be deposited for collection  
and mailing on the date indicated above.

12 I further declare that I am readily familiar with the City of San José's business  
13 practice for collection and processing of correspondence for mailing with the United  
States Postal Service. Under the business practice, this correspondence would be  
14 deposited with the United States Postal Service on the date above in the ordinary  
course of business.

15 I further declare that the name and addresses on the envelope appear as follows:

16 Teresa Nguyen  
17 dba Motif Lounge  
389 South First Street  
18 San José, CA 95113.

19 Richard Warren, Esq.  
20 Law Offices of Richard D. Warren  
929 Fresno Avenue  
21 Berkeley, CA 94707.

22  
23  
24 I declare under penalty of perjury under the laws of the State of California that the  
25 foregoing is true and correct. Executed on August 28, 2013 at San Jose, California.

26  
27 LT. Ed Schroder #3045  
28 San José Police Department

Richard D. Warren

929 Fresno Avenue, Berkeley CA 94707

Attorney at Law

Tel 510.528.4423 Fax 510.217.4353

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[www.rdw-lawyer.com](http://www.rdw-lawyer.com)

By E-mail only to [diane.buchanan@sanjoseca.gov](mailto:diane.buchanan@sanjoseca.gov)

August 11, 2013

Secretary- San Jose Appeals Hearing Board

Department of Planning, Building and Code Enforcement

200 East Santa Clara St.

San Jose, CA 95113

ATTN: Dianne Buchanan

RE: Appeal from August 9, 2013 Decision of Dep. Chief David Hober Against

Teresa Nguyen

Dbm Motif Lounge

389 South First St.

San Jose, CA 95113

Dear Secretary Buchanan:

I am the attorney for Ms. Teresa Nguyen, owner of the Motif Lounge, and I appeared with Ms. Nguyen at the July 24th Hearing. Ms. Nguyen hereby appeals from the August 9, 2013 Decision of Deputy Chief David Hober suspending Ms. Nguyen's Entertainment Permit for 14 days for a violation of the City's Promoter Ordinance.

I am on vacation and out of my office until August 26, 2013 so please acknowledge receipt of this appeal notice by replying to me at the above e-mail address. I do not have the technology here to print and sign this letter, so please accept this unsigned and e-mailed version as an original document.

If you have any questions, please let me know. Many thanks for your consideration.

Respectfully,

Richard D. Warren

Cc: Sgt. Todd Trayer (by e-mail) and Kevin Fisher (by e-mail)

DECISION OF HEARING OFFICER RELATING TO:  
TERESA NGUYEN DBA MOTIF LOUNGE - APPEAL OF SUSPENSION OF  
ENTERTAINMENT PERMIT, HEARING DATE JULY 24, 2013

Hearing Date: July 24, 2013  
Time: 1:00 P.M.  
Place: San José City Hall  
200 E. Santa Clara Street, 15<sup>TH</sup> Floor  
San José, California 95113  
Hearing Officer: David J. Hober  
Deputy Chief of Police

The City of San José, in a letter dated June 13, 2013, advised Teresa Nguyen, d/b/a Motif Lounge of the intent to suspend the Public Entertainment Permit for a period of fourteen (14) days. Teresa Nguyen requested a hearing to appeal the suspension of the Public Entertainment Permit pursuant to San Jose Municipal Code (SJMC) Section 6.60.510.

The Hearing Officer, Deputy Chief of Police David J. Hober presiding, opened the public hearing at approximately 1:07 p.m. on Wednesday, July 24, 2013 in a conference room on the sixteenth floor at San José City Hall. The Hearing Officer was accompanied by counsel, Kevin Fisher, Senior Deputy City Attorney of the San José City Attorney's Office. The hearing was audio recorded.

Those present at the hearing on behalf of the City of San José were Sergeant Todd Trayer, Vice Unit, San José Police Department and Sergeant Rick Galea, Downtown Services Detail, San José Police Department.

Those present at the administrative hearing on behalf of Teresa Nguyen were Teresa Nguyen, Owner of Motif and Richard D. Warren, Attorney at Law.

Sergeant Trayer and Sergeant Galea presented evidence and argued that the suspension should be upheld. Mr. Warren also presented evidence and counterarguments that the suspension should be overturned.

At the end of the hearing, Mr. Warren asked if he could submit an exchange of texts between Teresa Nguyen and Brandon Younger. The Hearing Officer agreed that if Mr. Warren wanted to submit the texts within a reasonable time before the 20 days the decision would be made (August 13, 2013) the Hearing Officer would accept them. On July 31, 2013, Mr. Warren emailed eight pages of text messages to the Hearing Officer and Sergeant Trayer.

The administrative hearing was closed at approximately 3:40 p.m. on July 24, 2013.

In making this decision, the Hearing Officer considered each of the following documents submitted to the Hearing Officer as part of the record for the administrative hearing: (i) "City Exhibit A" – The City of San José's Brief dated July 11, 2013; The Notice of Hearing dated June 25, 2013 (and proof of service); The Notice of Intended Action dated June 13, 2013 (and proof of service); A letter from Richard Warren requesting a hearing, dated June 14, 2013; A Public Entertainment Business Permit for Motif Lounge, dated January 10, 2012; San Jose Police Department General Offense Report 2013-131380007; (ii) "City Exhibit B" – a DVD of video taken on May 18, 2013 at approximately 0112 hours at Motif, by Officer Pfeifer #3951; (iii) "City Exhibit C" – Police Report written by Sergeant Rick Galea 2013-131380007; (iv) "Motif Exhibit 1" – two pages of text messaging between Teresa Nguyen and Brandon Younger; (v) "Motif Exhibit 2" – Five pages of Motif "Facebook" (two Facebook sites - Motif Nightclub & Motif S.J.) and "Instagram" posts; (vi) "Motif Exhibit 3" – Email from Rick Warren to David Hober; a letter from Richard Warren to David Hober, dated July 31, 2013; eight pages of text messages between Brandon Younger and Teresa Nguyen; and (vii) Audio Recording of the Hearing. The Hearing Officer also considered oral testimony from each of the following individuals present at the hearing: (i) Sergeant Todd Trayer; (ii) Sergeant Rick Galea; and (iii) Teresa Nguyen.

#### FINDINGS OF FACTS AND DETERMINATION.

The Hearing Officer has carefully read, reviewed, and considered all of the documents submitted as part of the administrative hearing. The Hearing Officer has also carefully reviewed and considered the testimony on July 24, 2013 and the additional materials submitted by Mr. Warren on July 31, 2013. The Hearing Officer hereby upholds the suspension of the Business Entertainment Permit issued to Teresa Nguyen d/b/a Motif Lounge for (14) fourteen days. The basis for the decision is set forth in detail below.

##### **A. GENERAL ISSUES**

##### **1. DID BRANDON YOUNGER MEET THE DEFINITION OF AN EVENT PROMOTER FOR THE EVENT AT MOTIF STARTING ON FRIDAY, MAY 17, 2013 AND ENDING SATURDAY, MAY 18, 2013?**

Mr. Warren argued that Brandon Younger did not meet the criteria as a promoter as required by the SJMC because Teresa Nguyen did not pay Brandon Younger for the promotion of the event which started during the late hours of Friday, May 17, 2013 and lasted into the early hours of Saturday, May 18, 2013. Teresa Nguyen stated during the hearing that when paying Brandon Younger, she does

so with a check and provides a 1099. Teresa Nguyen stated she did not pay Brandon Younger for this promotion, because Sergeant Trayer told Teresa and Brandon that Brandon could not promote the event on Wednesday, May 15, 2013. Mr. Warren asserts that because no compensation was paid by Ms. Nguyen to Brandon Younger – he does not meet the definition of a "promoter" as outlined in the SJMC.

SJMC section 6.62.040 reads:

A. – "Event promoter" means any person who:

1. Is directly or indirectly responsible for the promotion of an event as evidenced by activities such as, but not limited to contracting with the principals, selecting entertainment, advertising or otherwise holding out the event to members of the general public, inviting participants to the event, renting or controlling the event site, or serving as a designated on-site representative while the event is occurring as provided in Section 6.62.350 of this chapter; and

2. In exchange for engaging in the promotion of the event, as described in Section 6.62.040A.1., directly or indirectly receives or shares in any of the following:

- a. Admission or entrance fees paid by participants or spectators;
- b. Compensation, consideration or other revenue from sponsors, private donors or managers and/or owners of the event site; or
- c. Revenues from concessions or other sales at the event.

It is clear that Brandon Younger promoted the event as is described in section 6.62.040 A.1. both prior to the meeting and discussions with Sergeant Todd Trayer on May 15, 2013 and after the meeting with Sergeant Trayer.

The text messages (contained in "Motif Exhibit 3") show Teresa Nguyen texting with Brandon Younger that Younger is going to do a party for his friend from the Cincinnati Bengals NFL team on May 17, 2013 and that Teresa is going to give 35% of the door (April 22, 2013 texts). On May 1, 2013, Teresa confirms May 17, 2013 with Brandon and instructs Brandon to make a flier and to book a DJ. On May 2, 2013, Teresa talks about a "door split" in regard to Thursday nights. On May 11, 2013, Brandon talks about someone who wants a deal for his party on the next Friday (would have been May 17, 2013) and Teresa states she can discount \$100 off. Brandon and Teresa also talk about each having a "door girl" (May 11, 2013 texts).

Based on testimony at the hearing - the meeting and phone calls between Sergeant Todd Trayer and Teresa Nguyen and Brandon Younger occurred before noon on Wednesday, May 15, 2013. On May 15, 2013, Sergeant Trayer advised Teresa and Brandon that because Brandon does not have a promoter permit he can not promote the event on May 17, 2013. Based on Twitter, Facebook and Instagram accounts (part of SJPD General Offense Report and a

stipulation by Mr. Warren) Brandon Younger continued to promote the event for May 17, 2013, after the discussions with Sergeant Trayer on May 15, 2013 to cease any further event promotion.

During the hearing, Mr. Warren argued that Teresa Nguyen can not control what Brandon Younger does for the promotion and that after May 15, 2013, Teresa Nguyen did not post any of Brandon Younger's promotional information on the Motif Facebook and Instagram pages that were under Ms. Nguyen's control ("Motif Exhibit 2").

However, on May 16, 2013, Brandon Younger texts Teresa Nguyen, "Teresa I got player Josh wants platinum package. 2 patron, 2 Hennessy, and 2 rose" to which Teresa responds "Ok full price." Brandon replies, "Ok" and Teresa sends back, "Send me all the tables book". Thus, Brandon Younger is still *inviting participants to the event* after being told by Sergeant Trayer not to promote and Teresa Nguyen acknowledged that Brandon Younger was continuing to solicit participants for the May 17 event.

The question then turns to SJMC section 6.62.040 A.2. Did Brandon Younger directly or indirectly receive compensation, consideration or other revenues from his promotion of the event? Teresa Nguyen stated she did not pay Brandon Younger for the event on May 17, 2013, because Sergeant Trayer had told them Brandon Younger could not promote the event on May 17, 2013 without a permit. Teresa testified that in essence, she was concerned that this would anger Brandon Younger because he had done so much work in promoting this event prior to the May 15, 2013 discussions with Sergeant Trayer.

Prior to May 15, 2013, Teresa and Brandon texted about the "door girls" Brandon related, "I gave my door girl instructions for the night" and Teresa wrote, "Ok let her know my door girl going to be there too" (May 11, 2013; 3:35 pm texts). When Teresa Nguyen testified, she related that the "door girls" always worked for her and that she could not make a distinction between Brandon's "door girl" and her "door girl." Teresa did state that at the event on May 17, 2013 there were two "door girls" but that they both worked for her. This is important because according to testimony by Sergeant Galea, each interested party typically has a "door girl" to ensure the money collected at the door is split appropriately. It would seem, according to the texts of April 22, 2013, that the split between Teresa and Brandon would have been 35% or more if Brandon were being paid for the promotion.

The question becomes, does one believe that Teresa Nguyen did not pay Brandon Younger any fees for promoting the party on May 17, 2013. However, even if Teresa Nguyen did not directly pay Brandon Younger for promoting the event on May 17, 2013, one can turn to section A.2.b and the question becomes - did Brandon Younger receive any admission or entrance fees, compensation, consideration or other revenue from sponsors, private donors or managers of the

event site, or revenues from concessions or other sales at the event. If Mr. Younger received fees, compensation, consideration or revenues arising from his event promotion activities from any of these sources, he was acting as an Event promoter under the Municipal Code.

Based upon the evidence and testimony at the hearing, it appears that Mr. Younger did receive consideration or other revenue arising from the May 17, 2013 event at Motif. First, as described above, the text messages regarding the "door girls" and the testimony of Sergeants Trayer and Galea support a conclusion that the two door girls were at the May 17, 2013 event to manage a door revenue split between Motif and Mr. Younger. Second, I find Sergeant Galea's testimony that promoters generally do not attend events unless they are making money from the event to be credible evidence that Mr. Younger's presence at the May 17, 2013 event supports a conclusion that Mr. Younger received consideration or other revenue from the event.

## **2. IS TERESA NGUYEN, DBA MOTIF RESPONSIBLE FOR VIOLATIONS OF THE PROMOTER ORDINANCE?**

Mr. Warren argued that Teresa Nguyen could not control Brandon Younger if he continued to promote the event on May 17, 2013 after being told not to by Sergeant Trayer on May 15, 2013. The inference being that Teresa Nguyen and Motif should not be held responsible for the actions of promoter Brandon Younger.

SJMC Section 6.62.360 B. reads;

Each event promoter, and any other persons responsible for the operation of the event site, excluding the city, its agents, officers and employees, shall be jointly and severally liable for:

1. Any violation of this chapter;
2. Any violation of any other license or permit required for the event; and
3. Any violation of any other applicable law that arises out of the promotion of the event.

Police officers arrived at Motif in the early hours of May 18, 2013 and located Brandon Younger on the stage with a microphone in his hand. Officer Daniel Pfiefer's police report relates that he arrived on May 18, 2013 at approximately 12:06 a.m. and observed Brandon Younger upstairs. Officer Pfiefer returned to Motif at approximately 1:12 am and video taped Brandon Younger on the stage with a microphone speaking to the crowd.

Teresa Nguyen testified that she did not know Brandon Younger was in the club until Sergeant Galea made contact with her at the club and told her Brandon was there. Sergeant Galea could not recall exactly what time he made contact with Teresa Nguyen at Motif.



Teresa Nguyen related that she sent Brandon Younger a text that stated, "U not coming in tonight right?" And, "I told the staff it's not ur party." ("Motif Exhibit 1" texts on May 17, 2013 at 6:42 pm). There was a text from Brandon Younger to Teresa Nguyen on May 17, 2013 at 10:35 pm that read, "Hey can u let me in side door?" and another that read, "I'm at the side door". Teresa Nguyen testified that she never saw those text messages until she allowed Sergeant Galea to review her text messages on the night of May 17, 2013 (early hours of May 18, 2013) and he pointed them out to her. Teresa Nguyen testified that she did not instruct staff that they were to deny Brandon Younger entry into the club if he showed up -- she simply advised them that it was not his party. Teresa Nguyen stated that she did not want to deny Brandon Younger entry, because he was already upset that she had cancelled his event in order to comply with the Municipal Code and that he was not going to be paid for the promotion activities that he had undertaken. In reviewing the evidence, that would mean that Brandon Younger was in the club for either 1 hour and 31 minutes (from 10:35 pm text to 12:06 -- the first time officers arrived at the club -- Officer Pfifer's report) OR 2 hours and 37 minutes (from 10:35 pm text to 1:12 am the second time officers arrived at the club -- Officer Pfiefer's report) without Teresa Nguyen being aware of it.

Teresa Nguyen testified that her procedure when using promoters that did not work directly for her business was to have the promoter fill out an "indemnification" contract on the date of the actual event so they would not have to obtain a promoter permit. She testified that was what was going to occur with Brandon Younger on May 17, 2013 as she could have the notary there on that date as well. SJMC Section 6.62.210 is titled "Event promoter permit exemption" and provides, in part:

A.1: -- An event promoter shall not be subject to the requirements of Section 6.62.200 if the following conditions are met:

1. The event promoter and the owner or operator of the site where the event is scheduled to occur have mutually agreed, by written contract, that the owner or operator of the event site shall be liable for the following:
  - a. All claims, losses or liabilities, except contract claims, that arise out of the promotion of the event;
  - b. any violation of any licenses or permits required for the event;
  - c. Any violations of this Code that arise out of the promotion of the event; and
  - d. Any violations of any other applicable laws that arise out of the promotion of the event.

Teresa Nguyen and Brandon Younger could have both advised Sergeant Trayer that they were going to enter into an indemnification contract as provided for in SJMC Section 6.62.600, when they spoke to him on May 15, 2013. If they would

have then entered into the contract and provided it to Sergeant Trayer, prior to the event, none of the current issues would have arisen. The concern Teresa Nguyen had in angering Brandon Younger for cancelling the event and allegedly not paying him would not have occurred. The event could have gone on as planned and Teresa Nguyen would not have had to offer discounts, because the event was not as big as it would have been if Brandon Younger were able to continue to promote it (Teresa Nguyen testified that she had to reduce the prices she usually charges, because they had to cancel the promotion by Brandon Younger two days before the actual event).

Brandon Younger was promoting the event scheduled for May 17, 2013 both prior to and after the discussion with Sergeant Trayer on May 15, 2013, without a promoter permit, in violation of the SJMC. Pursuant to SJMC section 6.62.360 A and B, Teresa Nguyen failed to comply with all applicable laws and ordinances governing the promotion of any event and was jointly and severally liable for Mr. Younger's failure to obtain a promoter permit.

#### CONCLUSION

SJMC Section 1.13.040 defines a public nuisance as the operation of a business in violation of the San Jose Municipal Code [SJMC 1.13.050(A)(3)].

SJMC Section 6.60.370 states that an entertainment permit may be suspended or revoked if the business operates as a public nuisance. SJMC Section 6.60.290 prohibits the operation of an entertainment establishment that constitutes a public nuisance.

Teresa Nguyen, d/b/a Motif Lounge and Brandon Younger, violated the San Jose Municipal Code as set out above. As such, Teresa Nguyen, d/b/a Motif Lounge was operating as a public nuisance.

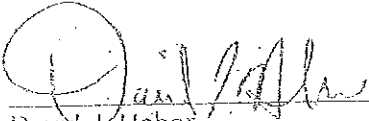
Given the set of circumstances in this case, Teresa Nguyen, d/b/a Motif Lounge utilizing a promoter in violation of the "Promoter Ordinance" warrants a suspension of the Public Entertainment Permit for a period of (14) fourteen days.

#### APPEAL PROCESS

You are entitled to a hearing before the City of San Jose Appeals Hearing Board, if you are dissatisfied with this decision. The request for appeal must be in writing and received by the Secretary of the Board within ten (10) calendar days of the date this decision is served upon you. Pursuant to SJMC Section 1.04.140, service of this decision upon you is deemed to have been completed at the time of deposit in the post office. The mailing address of the Appeals Hearing Board is:

Secretary – San Jose Appeals Hearing Board  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113  
Attn: Diane Buchanan  
diane.buchanan@sanjoseca.gov

Unless the secretary of the Appeals Hearing Board receives a written request for appeal from you within ten (10) calendar days of the date this decision is served upon you, the 14-day suspension of your Public Entertainment Permit will become effective upon the eleventh (11<sup>th</sup>) calendar day after this decision is served upon you.



David J. Hober  
Deputy Chief of Police

08-09-13

Date

cc: Sergeant Todd Trayer

CITY EXHIBIT A



San José Police Department

July 11, 2013

Deputy Chief David Huber  
City of San Jose, Police Department  
201 W. Mission Street  
PO Box 270  
San José, CA 95103-0270

Re: Suspension of MOTIF's Entertainment Permit  
Date: July 24, 2013  
Time: 1:00 p.m.  
Location: San José City Hall,  
200 E. Santa Clara Street, 16<sup>th</sup> Floor

Deputy Chief Huber,

MOTIF Lounge (MOTIF) appeals from the City of San José Police Department's intended decision to suspend its Entertainment Permit for a period of ten (14) days.

This is a simple case. MOTIF was warned that if an unlicensed promoter was going to perform at its venue. Both MOTIF and the promoter assured the Department that it would not proceed. Despite the assurances, MOTIF continued with the event and the unlicensed promoter. A suspension is appropriate. The City requests the decision be upheld.

#### I. INTRODUCTION AND STATEMENT OF THE FACTS.

As stated in the Notice of Decision, MOTIF holds an Entertainment Permit issued by the San José Police Department.

##### A. The permitting system.

Public Entertainment Businesses are licensed under San José Municipal Code, Chapter 6.60. The operation of the business requires licenses for the business itself, managers as well as promoters. The licensing and background is necessary to protect the safety and welfare of the patrons of the business. The licensed businesses must comply with rules regarding security, waiting lines, managers, occupancy and reporting requirements. (See, SJMC Sections 6.60.240, *et seq.*) The City also employs Downtown Entertainment Zone officers to provide increased protection for those

Re: Hearing on MOTIF Suspension  
July 11, 2013  
Page 2

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enjoying the nightlife. (SJMC Section 6.60.400, et seq.) None of the City's efforts, however, will produce results if the businesses simply choose to ignore permit conditions as a cost of doing business. As explained below, MOTIF did just that.

B. Procedural History.

On June 13, 2013 the City provided MOTIF with the Notice of Intended Action. MOTIF timely requested a hearing.

C. Conduct of the Hearing.

The San José Municipal Code provides that this is an informal hearing and that the technical rules of evidence do not apply. The parties may present witnesses and documents. [SJMC Section 6.60.510(E).] The City provides the documents attached to this letter in support of the revocation, as well as the video of events. In addition, Sgt. Todd Trayer #3301 will provide testimony. The City may also present testimony from:

Sgt. Rick Galea #3495

Ofc. Justin Miller #4020

Ofc. Pfeifer #3951

Ofc. Marquardt #4096

Teresa Nguyen (Business owner)

Brandon Younger (Entertainer)

The City further reserves the right to present documents or witnesses for impeachment.

II. THE HEARING OFFICER SHOULD UPHOLD THE SUSPENSION OF THE PERMIT FOR ACTS OF MISCONDUCT.

San José Municipal Code section 6.60.370 (e) states that an entertainment permit may be suspended or revoked for any violation of Chapter 6.60, or upon a violation of the terms and conditions of an Entertainment Permit. MOTIF's Entertainment Permit further requires compliance with the San José Municipal Code. (Permit, ¶1A)

San José Municipal Code Section 6.60.295(A) provides:

Event Promoters

A. No permittee shall use, hire, employ or otherwise avail itself of the services of an event promoter, as defined in Chapter 6.62 of this code, to promote any event at the permitted business unless the event promoter has obtained an event promoter permit as required by Chapter 6.62 or the permittee and the event promoter comply with the provision of Sections 6.62.210 and 6.62.390 of Chapter 6.62, including the requirement that the permittee and the event promoter enter into a written contract as described in Section 6.62.210.

In turn, Section 6.62.040 defines an "event promoter" as any person who directly or indirectly receives any compensation, revenue, or other payment from an entertainment venue. The event promoter is directly or indirectly, is:

responsible for the promotion of an event as evidenced by activities such as, but not limited to contracting with the principals, selecting entertainment, advertising or otherwise holding out the event to members of the general public, inviting participants to the event, renting or controlling the event site, or serving as a designated on-site representative while the event is occurring as provided in Section 6.62.350 of this chapter

[SJMC Section 6.62.040(a).]

Employees of the venue, newspapers themselves, and a pure entertainer are not considered promoters. (SJMC Section 6.62.040(b).]

Re: Hearing on MOTIF Suspension

July 11, 2013

Page 4

As demonstrated by the documentation, Brandon Younger promoted a MOTIF event through advertising and on the internet. In fact, Mr. Younger promoted the MOTIF event through Twitter and Facebook. The advertising states, "Brandon Younger x PRESENTS ..." an event for Friday, May 17, 2013.

When the event was brought to the attention of the Department, on May 15, 2013, Sgt. Todd Trayer called Ms. Nguyen, owner of MOTIF, and explained that the event was being promoted by an unlicensed promoter in violation of the San José Municipal Code. Ms. Nguyen assured Sgt. Trayer that the event would not proceed, because she wanted to comply with the law. Similarly, Sgt. Trayer spoke with Mr. Younger. At that time, Mr. Younger was told that he was not licensed in San José. Again, Sgt. Trayer was assured the event would not occur.

Despite the warning and explanation, MOTIF proceeded with the event with Mr. Younger (Video of the event will be presented). Apparently, MOTIF made a business decision to proceed with the event, *knowing* it was in violation of the San José Municipal Code, and having been warned by the Department not to proceed.

MOTIF cannot be rewarded for providing assurances to the Department that it will comply, and then choose not to do so. Compliance with the San José Municipal Code is mandatory, not optional. The Department made sure that MOTIF was informed of the promoter requirements, but to no avail. Suspension of the entertainment permit is appropriate.

III. THE HEARING OFFICER SHOULD UPHOLD THE SUSPENSION OF THE PERMIT BECAUSE VIOLATIONS OF THE SAN JOSÉ MUNICIPAL CODE CREATE A NUISANCE.

San José Municipal Code Section 6.60.370 states that an entertainment permit may be suspended or revoked if the business operates as a public nuisance as defined, among other things, in Section 1.13.050 of the Code. [SJMC §6.60.370(L)] Additionally, San José Municipal Code Section 6.60.290 prohibits the operation of an entertainment establishment such that it constitutes a public nuisance, also as defined in Section 1.13.050.

In turn, Section 1.13.040 defines a public nuisance as the operation of a business in violation of the San José Municipal Code [SJMC §1.13.050(A)(3)].

Therefore, businesses which operate in violation of the San José Municipal Code are a nuisance, as a matter of law. Again, in this case, the violation was neither accidental nor inadvertent. MOTIF made a decision to proceed with an event that was not in compliance with the Code. That operation is a nuisance.

Re: Hearing on MOTIF Suspension.  
July 11, 2013  
Page 5

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#### IV. CONCLUSION.

The permitting system is designed to protect the public health, safety and welfare. The Department can only use so many resources to ensure compliance with the Code, which is the ultimate goal. However, when efforts to obtain compliance, even going so far as to warn an establishment of a potential violation, are ignored, enforcement is necessary. MOTIF's entertainment permit should be suspended.

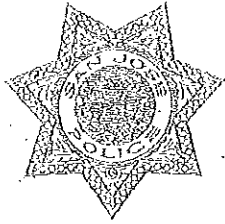
Respectfully submitted,

*Sgt. Todd Trayer* # 3341

Sgt. Todd Trayer

cc: Teresa Nguyen  
MOTIF Lounge  
Richard D. Warren, Esq. (Attorney for MOTIF)  
Kevin Fisher, Esq. (Attorney for Hearing Officer)





*San José Police Department*  
BUREAU OF TECHNICAL SERVICES

June 25, 2013

Teresa Nguyen  
d/b/a Motif Lounge  
389 South First St.  
San Jose, CA 95113

Re: NOTICE OF HEARING  
Appeal of Suspension of Entertainment Permit

Dear Ms. Nguyen,

The City of San José has received your request to appeal the suspension of your entertainment permit. The first step in the appeal process is a hearing before the Chief of Police. If you are dissatisfied with that decision, then you may appeal to the Appeals Hearing Board. The grounds for the suspension are set forth in the Notice of Intended Decision.

Your hearing will take place before Deputy Chief David Hober on:

DATE: July 24, 2013  
TIME: 1:00 p.m.  
LOCATION: San José City Hall  
16<sup>th</sup> Floor  
200 E. Santa Clara Street  
San José, CA 95113

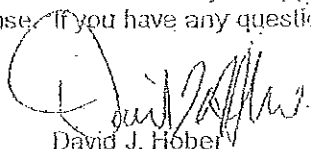
Under San José Municipal Code Section 6.60.510, this is your opportunity to present evidence and witnesses. This is an informal hearing, and the technical rules of evidence do not apply. The Chief may consider any and all evidence that he deems reliable, relevant and not unduly repetitious. The decision of the Chief of Police will be made after that hearing.



855 N. San Pedro St. San José, CA 95110 tel (408) 277-5176 fax (408) 277-3380 [www.sj.org](http://www.sj.org)

SJA18000018

The request for documents set out in your appeal request has been forwarded to City staff for response. If you have any questions, please do not hesitate to call.



David J. Hober  
Deputy Chief  
Bureau of Technical Services  
San Jose Police Department

Cc: Richard D. Warren, Esq.  
Colleen Winchester, Sr. Deputy City Attorney

MOTIF000007

SJAHB0000019

1  
2 PROOF OF SERVICE

3 CASE NAME: Teresa Nguyen, d/b/a Motif Lounge  
4

5 I, the undersigned declare as follows:

6 I am a citizen of the United States, over 18 years of age, employed in Santa Clara  
7 County, and not a party to the within action. My business address is 201 West Mission  
8 Street, San Jose and is located in the county where the service described below  
9 occurred.

10 On June 25, 2013 I caused to be served the within:

11 NOTICE OF HEARING  
12 Appeal of Suspension of Entertainment Permit  
13 d/b/a Motif Lounge

14 ☒ by MAIL, with a copy of this declaration, by depositing them into a sealed envelope,  
15 with postage fully prepaid, and causing the envelope to be deposited for collection  
16 and mailing on the date indicated above.

17 I further declare that I am readily familiar with the City of San Jose's business  
18 practice for collection and processing of correspondence for mailing with the United  
19 States Postal Service. Under the business practice, this correspondence would be  
20 deposited with the United States Postal Service on the date above in the ordinary  
21 course of business.

22 I further declare that the name and address on the envelope appear as follows:

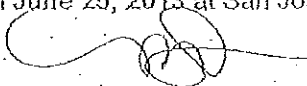
23 Party Served:

24 Teresa Nguyen  
25 d/b/a Motif Lounge

26 Party's Business Address:

27 389 South First St  
28 San Jose, CA 95113

29 I declare under penalty of perjury under the laws of the State of California that the  
30 foregoing is true and correct. Executed on June 25, 2013 at San Jose, California.

31   
32 Marie Silva

MOTIF000008

SJAHB000020



San Jose Police Department

June 13, 2013

Teresa Nguyen, Owner  
Motif Lounge, dba  
389 South First St.  
San Jose, CA 95113

\*\*\*\*\* NOTICE OF INTENDED ACTION \*\*\*\*\*

The purpose of this Notice of Intended Action ("Notice") is to advise Motif Lounge, d.b.a. "Motif Lounge" (hereinafter "Motif").. Teresa Nguyen (hereinafter, "Nguyen") of an intended action regarding Motif Lounge's Public Entertainment Business (hereinafter, "Business") in the City of San Jose. Please review this document carefully. For ease of reference, Motif and Nguyen will hereinafter collectively be referred to as "Motif".

Action to be taken: Notice of Intended Decision to Suspend Entertainment Permit for Fourteen (14) Days beginning June 28, 2013 and ending (to include) July 12, 2013.

Type of Permit/license: Public Entertainment Business Permit

FACTUAL BACKGROUND

On or about February 5th, 2012, the San Jose Police Department (hereinafter, "Police") granted Motif, a Permit to provide public entertainment in San Jose. The effective date of the Permit is February 5, 2012 to February 5th, 2016.

On May 15, 2013, Sgt. Trayer received information that an illegally promoted event was going to take place at Motif Lounge. That same day, Sgt. Trayer called Nguyen and confirmed Motif Lounge had planned to use promoter Brandon Younger for an event. When Sgt. Trayer advised that Brandon Younger did not have a promoter's permit, Nguyen agreed to cancel the promoted event stating she did not want to be in violation of the law.

Sgt. Trayer also called Brandon Younger. Mr. Younger indicated that he was not aware of the promoter requirements and told Sgt. Trayer he would not be having the event as planned.

MOTIF000009

SJAHB000021

On May 17, 2013, Sgt. Galea and his team responded out to ensure the illegal event was not still taking place (Event Number 13-138-0007). They observed the promoter, Brandon Younger, on stage hosting the event.

Downtown Services Units documented and submitted screenshots of the event which were still promoted from Brandon Younger to include the door cover charges on May 17, 2013.

These actions were violations of your Entertainment Permit, ABC Conditions and the San Jose Municipal Code.

#### RELEVANT LAW

Listed below are the relevant sections of the San Jose Municipal Code ("SJMC"):

#### SJMC Sections:

- 1.13.050- Public Nuisance Defined
- 6.60.290- Public Nuisance Prohibited
- 6.60.295- Event Promoters
- 6.60.370- Denial, Suspension, or Revocation
- 6.60.028- Public Entertainment (defined)

SJMC Section 1.13.050 Public Nuisance Defined: provides, in relevant part:

A. ... a public nuisance is ...:

- 3. The maintenance or use of property in the city in a manner that violates, or real property that has been the situs of a violation of, any provision of this code or any other city, state or federal law or regulation.

#### SJMC Section 6.60.028: Public Entertainment

"Public entertainment" means any of the following activities:

- A. Dancing;
- B. Singing;
- C. Audience participation in the entertainment; or
- D. Live entertainment.

(Ord. 28840.)

MOTIF000016

SJAHB000022

SJMC Section 6.60.290: Public Nuisance Prohibited

The permittee shall not conduct the permitted business in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the permitted premises. (Ord. 27782, 27783.)

SJMC Section 6.60.295: Event Promoters

A. No permittee shall use, hire, employ or otherwise avail itself of the services of an event promoter, as defined in Chapter 6.62 of this code, to promote any event at the permitted business unless the event promoter has obtained an event promoter permit as required by Chapter 6.62 or the permittee and the event promoter comply with the provision of Sections 6.62.210 and 6.62.390 of Chapter 6.62, including the requirement that the permittee and the event promoter enter into a written contract as described in Section 6.62.210.

B. The permittee shall maintain a copy of any contracts executed between the permittee and the event promoter that are required by this chapter and Chapter 6.62 on file at the permitted business for a period of not less than two (2) years. The two (2) year period shall commence on the later of the last day of operation of the specific event being promoted or the contract's expiration date.

C. A copy of any contracts required by this chapter and Chapter 6.62 shall be made available for inspection and copying by the chief of police or any city official responsible for enforcing the provisions of this code.

D. Any permittee who uses, hires, employs or otherwise avails itself of the services of an event promoter shall ensure that the event promoter complies with the requirements pertaining to security personnel retained by the event promoter set forth in Section 6.62.370 of Chapter 6.62.

(Ord. 28317.)

SJMC Section 6.60.370: Denial, Suspension, or Revocation

An application for an entertainment permit or license may be denied and an entertainment permit or entertainment license issued pursuant to this title may be suspended or revoked by the department head upon any of the following grounds:

MO11F000011

SJAHB000023

E. Violation of the terms and conditions of the entertainment permit or entertainment license or other requirements of this chapter within the past five years;

L. The licensee or permittee has conducted the licensed or permitted business in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the licensed or permitted premises.

(Ords. 24605, 27602, 27782, 27783.)

#### REASON FOR THE INTENDED ACTION

Motif ignored the provisions of the San José Municipal Code, despite having been warned that its proposed event was in violation of the Code, and after assuring the Department that the event would be rescheduled. This conduct is both a violation of the San José Municipal Code and constitutes a public nuisance. Either ground is sufficient to support this suspension.

A. MOTIF violated the operational requirements of the San José Municipal Code, warranting revocation of its Entertainment Permit.

An entertainment permit may be suspended or revoked by the department head if the business operates in violation of the San José Municipal Code. [SJMC Section 6.60.370(E).] Motif's Permit expressly requires compliance with both the San Jose Municipal Code and all other laws. (Permit, ¶1A - C)

Motif not only allowed, but actually arranged for, a promotion to occur that is in violation of the San Jose Municipal Code and in violation of the terms and conditions of its Permit. The San Jose Police Department advised Motif of the potential violation, and Ms. Nguyen and Mr. Younger both provided assurances that they would cancel the event rather than be in violation of the Code.

MOTIF000012

SJAHB000024

However, on May 17, 2013, Mr. Younger, the promoter who allegedly cancelled, was onstage and holding an event. The event was posted on FaceBook and Mr. Younger continued to provide answers to patrons on the event specifics. This was after Sgt. Trayer had spoken to both Teresa Nguyen and the Promoter, Mr. Younger. Both Nguyen and Younger told Sgt. Trayer they would not be having the event.

- B. MOTIF has violated the San José Municipal Code such that its operation constitutes a public nuisance, suspension revocation of its Entertainment Permit.

San José Municipal Code Section 6.60.370 states that an entertainment permit may be suspended or revoked if the business operates as a public nuisance. [SJMC §6.60.370(L.)] San José Municipal Code Section 6.60.290 prohibits the operation of an entertainment establishment such that it constitutes a public nuisance. Public nuisance is defined to include the operation of a business in violation of the San José Municipal Code [SJMC §1.13.050(A)(3).]

As a responsible business owner, MOTIF was required to ensure promoted events are done within the ordinance, including those provisions related to "event promoters." Even after the concern was brought to MOTIF's attention before the event, MOTIF assured the Department that it would comply, and then made a conscious decision to operate in violation of the Code. This constitutes a nuisance and supports a suspension of the permit.

#### INTENDED ACTION

Either one of these grounds, standing alone, is sufficient basis to suspend Motif's entertainment permit. Based upon the foregoing, you are hereby notified of the City's Intended Decision that Motif's Entertainment Permit be suspended for a period of Fourteen (14) days from June 28, 2013 and ending (to include) July 12, 2013.

#### YOUR RIGHTS

Pursuant to San Jose Municipal Code Section 6.60.510, if you wish to challenge this Notice of Intended Decision, you MUST file a written request for a hearing before the department head within ten (10) calendar days after service of this notice. If the department head does not receive a request for a hearing from you within this time period, this decision shall become final.

A written request for hearing must be sent to San Jose Police Department's Deputy Chief of Technical Services at the following address:


MOTIF000013



Deputy Chief David Hober  
855 North San Pedro  
4<sup>th</sup> Floor, Room 448  
San Jose, CA 95110

If a hearing is timely requested, a hearing will be scheduled within thirty calendar days after the receipt of a request for hearing. You will be provided at least ten (10) calendar days notice of the hearing. At the hearing, you shall be given the opportunity to present witnesses and documentary evidence. Other procedures are in the San Jose Municipal Code Section 6.60.500, and following, which is available on line at [www.sanjoseca.gov](http://www.sanjoseca.gov).

Larry Esquivel  
Acting Chief of Police

  
By: Sgt. T. Trayer Badge #3301  
San Jose Police Department  
Vice Unit

Encl: Proof of Service

1 PROOF OF SERVICE

2 CASE NAME: Teresa Nguyen (Owner) dba Motif Lounge

3 I, the undersigned declare as follows:

4 I am a citizen of the United States, over 18 years of age, employed in Santa Clara  
5 County, and not a party to the within action. My business address is 201 W. Mission  
6 Street, San Jose, CA 95110, and is located in the county where the service described  
below occurred.

7 On June 13, 2013, I caused to be served the within:

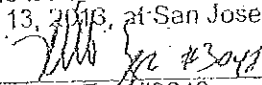
- 8 • NOTICE OF INTENDED ACTION;  
9 • VIOLATION OF SAN JOSE MUNICIPAL CODE SECTION  
10 6.60.370/1.13.050/6.60.290; AND  
11 • VIOLATION OF ENTERTAINMENT PERMIT CONDITIONS

12 ☒ by PERSONAL DELIVERY, with a copy of this declaration, by causing to be  
personally delivered a true copy thereof to the person at the address set forth  
below.

13 Addressed as follows:

14 Teresa Nguyen  
15 389 South First St.  
San Jose, CA 95113

16  
17 I declare under penalty of perjury under the laws of the State of California that the  
18 foregoing is true and correct. Executed on June 13, 2013, at San Jose, California.

19   
20 Ofc. M. Epp #3048  
21 San Jose Police Department  
22 Special Investigations/Vice Unit  
23  
24  
25  
26  
27  
28

Richard D. Warren  
Attorney at Law

829 Fresno Avenue, Berkeley CA 94707  
Tel 510.528.4423 Fax 510.217.4393  
[rickwarren@pacbell.net](mailto:rickwarren@pacbell.net)  
[www.abc-lawyer.com](http://www.abc-lawyer.com)

BY CERTIFIED MAIL  
No. 7008 1830-0002 2871 2687

June 14, 2013

Deputy Chief David Hober  
San Jose Police Department  
855 North San Pedro  
4<sup>th</sup> Floor, Room 448  
San Jose, CA 95110

RE: June 13, 2013 Notice of Intended Action Against  
Teresa Nguyen  
Dba Motif Lounge  
389 South First St.  
San Jose, CA 95113  
REQUEST FOR HEARING

Dear Chief Hober:

I am the attorney for Ms. Teresa Nguyen, owner of the Motif Lounge.

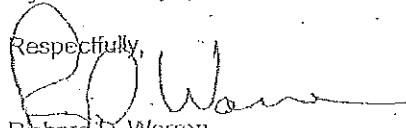
On June 13<sup>th</sup>, Ms. Nguyen received the City's Notice of Intended Action proposing to suspend her Entertainment Permit for 14 days for the violation of using a promoter who did not possess a promoter's permit.

This is Ms. Nguyen's REQUEST FOR A HEARING concerning the events outline in the City's notice.

Please provide me with a copy of any documents in the City's possession pertaining to the events described in the City's June 13 Notice.

If you have any questions, please let me know. Many thanks for your consideration.

Respectfully,

  
Richard D. Warren

Cc: Sgt. Todd Trayer (by e-mail)

MOTIF000016

SJAHB000028



ROBERT L. DAVIS  
CHIEF OF POLICE

CITY OF SAN JOSE, CALIFORNIA

POLICE DEPARTMENT  
201 W. MISSION STREET  
SAN JOSE, CA 95110

TERM: See Condition 11

Date: January 10, 2012

PUBLIC ENTERTAINMENT BUSINESS PERMIT FOR:

Motif Lounge

389 S First Street, San Jose, Ca. 95113

THIS PUBLIC ENTERTAINMENT BUSINESS PERMIT ("PERMIT") SHALL BE EXHIBITED PROMINENTLY IN A CONSPICUOUS PUBLIC PLACE ON THE BUSINESS PREMISES AND SHALL BE AVAILABLE UPON DEMAND BY ANY SAN JOSE POLICE OFFICER, CITY INSPECTOR, OR OTHER PERSON (SJM Code Section 6.02.100).

PUBLIC ENTERTAINMENT BUSINESS PERMIT TERMS AND CONDITIONS

The undersigned Public Entertainment Business Permittee ("Permittee"), and all persons holding and required to hold a Public Entertainment Ownership/Management License ("License") issued by the San Jose Police Department in connection with this Permit, agree to the following terms and conditions (the Permittee shall initial in the spaces provided):

1. Compliance with the San Jose Municipal Code and other Laws

- A. The Permittee, and any and all persons holding and required to hold a License issued by the San Jose Police Department in connection with this Permit, and any and all employees and agents of the Public Entertainment Business ("Business") for which this Permit is issued shall strictly comply with the provisions of the San Jose Municipal Code that govern or relate to the operation of this Public Entertainment Business, and to the use and maintenance of the Public Entertainment Business Premises ("Business Premises") and parking sites used by patrons of the Business,

MOTIF000017

- SJAHB000029

Public Entertainment Business Permit

Page Page 2 of 11

including, but not limited to Chapter 1.13 of Title 1 (administrative nuisance abatement), Chapter 4.76 of Title 4 (Business License Tax), Chapters 6.02 and 6.60 of Title 6 (Permit and License Procedures for Business Licenses and Regulations and Public Entertainment Permit Ordinance), Chapter 17.12 of Title 17 (Fire Code), Title 24 (Building Code), and Title 20 (Zoning Code). TN

- B. The Permittee, and any and all persons holding and required to hold a License issued by the San Jose Police Department in connection with this Permit, and any and all employees and agents of the Business for which this Permit is issued shall strictly comply with all provisions of County, State and Federal law that govern or relate to the operation of this Business, and to the use and maintenance of the Business Premises and parking sites used by patrons of the Business. TN
- C. The Permittee, and any and all persons holding and required to hold a License issued by the San Jose Police Department in connection with this Permit, and any and all employees and agents of the Business for which this Permit is issued shall strictly comply with all provisions of Local, County, State and Federal law. TN

2. Presence of Minors on Premises

- A. Persons under twenty-one (21) years of age shall not be allowed on the Business Premises after entertainment begins if alcoholic beverages are served. TN
- B. Persons under twenty-one (21) years of age shall not be present on the Business Premises if the State of California Department of Alcoholic Beverage Control has issued, or during the term of this Permit does issue, a Type 48 On-Sale Public Premises License for the Business Premises. TN

3. Private Security Requirements

- A. At all times while the Business Premises is open there shall be: A minimum of one (1) security personnel on duty for up to and including the first 50 patrons on site. Once the number of patrons exceeds fifty, there shall be an additional one (1) security personnel on duty for up to and including every additional 50 patrons on site. "On site" means and includes all patrons within the premises and waiting in line to enter the premises. By way of example, if there are 50 patrons and guests on site, there shall be at least one (1) security personnel on duty; if there are 150 patrons and guests on site, there shall be at least three (3) security personnel on duty; and so on. The security personnel shall provide security in front of the Business Premises and at adjacent parking sites used by patrons and guests. Security-related tasks may include, but not be limited to: removing problem patrons and guests from the Business Premises, removing illegal contraband from patrons and guests and immediately turning the contraband over to the proper law

Public Entertainment Business Permit  
Page Page 3 of 11

enforcement authorities, checking identifications of patrons and guests to ensure minimum age compliance with Local and State laws, and escorting patrons and guests from the Business Premises to another location. In addition, all security personnel shall register, and maintain valid registration status, with the State of California's Department of Consumer Affairs (State). Such registration shall occur by no later than 3 months from the date the security personnel apply for employment with the Permittee. To that end, all security personnel must submit the proper application to the State of California's Bureau of Security and Investigative Services immediately upon application for employment with the Permittee. At no time, shall any security personnel register with the State at any level that is less than that of a Proprietary Private Security Officer. Proof of application and registration for each person providing security for the Business for which this Permit is issued shall be retained by the Permittee and shall consist of copies of all relevant documentation including, but not limited to: application forms, receipts for application fees and live scan fees, United States Post Office proof of delivery, and actual proof of registration.

- TH
- B. The Chief of Police or the Chief's designee shall be authorized to increase the number of security personnel required to be on duty at the Business Premises and parking sites used by Business patrons and guests at any time and to the extent the Chief deems necessary to protect the public health, safety and welfare. TH
- C. The Permittee's security personnel shall be responsible for clearing the Permittee's patrons and guests from the sidewalk and street areas in front of the Business Premises and from other areas accessible to persons around the perimeter of the Business Premises at closing time. TH
- D. In numbers consistent with Section 3.A. above, the Permittee's security personnel shall start their shift no later than 9:00 p.m. and shall remain on the Business Premises past closing time until all patrons and guests have vacated the immediate area and parking lots. TH
- E. While on duty, each security personnel retained by the Permittee shall have a nameplate containing the security personnel's full name and the word "SECURITY" printed in bold, capital letters. The nameplate shall be exhibited prominently on the clothing and shall be visible and easily read at all times. The nameplate shall be a minimum of 2 inches high and 4 inches wide, with the required information printed in capital letters, at least 3/4 inches high and in a contrasting color. Hanging name badges and lanyards are prohibited. Alternatively, this requirement may be satisfied by embroidering the security personnel's name and the word "SECURITY" on the security personnel's outermost garment with the required information meeting the above specifications and located at chest level. TH

Public Entertainment Business Permit  
Page Page 4 of 11

- F. While on duty, security personnel shall not sit at the bar, consume alcoholic beverages or illegal drugs, be under the influence of alcoholic beverages or illegal drugs, or engage in any other unlawful drug activity or any other violations of law.

- G. Permittee shall not allow any security personnel to be, and no security personnel shall be, in possession of any firearm while on the Business Premises without that security personnel first having obtained a license from the appropriate state or local agency authorizing the security personnel to be in possession of a firearm.

- H. If Permittee employs security personnel that will be in possession of a firearm while on the Business Premises, Permittee shall, no less than (10) days prior to the date the armed security personnel will begin employment with Permittee, provide the Chief of Police with a copy of the license issued by the appropriate state or local agency to the security personnel authorizing the security personnel to possess such firearm. In addition, ten (10) days prior to the date the armed security personnel will begin employment with Permittee, the armed security personnel shall provide the Chief of Police with a copy of his or her law enforcement identification (if he or she is employed by a law enforcement agency) and his or her California Driver's license or California identification card.

4. State of California Alcoholic Beverage Control Requirements

- A. Permittee shall comply with all terms and conditions of the Alcoholic Beverage License issued by the State of California Department of Alcoholic Beverage Control and shall comply with all California statutes and regulations and San Jose Municipal Code provisions relating to the control of alcoholic beverages, including, but not limited to the prohibition against serving obviously intoxicated persons.
- B. Obviously intoxicated persons shall not be allowed to remain on the Business Premises.

5. Exhibition of Permits, Licenses, and Signs

During all business hours that the Business Premises is open, all required State of California, City of San Jose, and County of Santa Clara permits, licenses, and signs shall be exhibited prominently in a conspicuous public place on the Business Premises and shall be shown to any San Jose Police Officer, San Jose Fire Inspector or other City Inspector, or any other person upon request.

6. Parking And Parking Site Lighting

- A. The parking sites owned, leased or controlled by the Permittee and used by the Permittee's patrons and guests shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot. TN
- B. Lighting in the parking sites owned, leased or controlled by the Permittee and used by the Permittee's patrons and guests shall be directed, positioned, and shielded in such a manner so as not to unreasonably illuminate the window area of nearby residences. TN
- C. Permittee shall comply with any and all parking requirements and parking site conditions, including lighting conditions, which are set forth in the current Conditional Use Permit for the Business Premises which is City of San Jose Planning Commission Resolution 07-024, File No. CPA00-005-01. TN

7. Litter Control

The area adjacent to the Business Premises over which the Permittee has control shall be kept free of litter. TN

8. Pool Tables and Amusement Devices

There shall be no more than 2 pool tables or 9 amusement devices maintained upon the Business Premises at any time. All associated permits shall be exhibited prominently in a conspicuous public place on the Business Premises. TN

9. Approved Occupancy

- A. The maximum occupancy for the Business Premises shall be 805 persons. Occupancy for each individual area of the Business Premises shall be as provided on the Fire maps approved by the Fire Marshall of the San Jose Fire Department. TN
- B. During all business hours, the Permittee's Management or Staff shall keep a record of the current occupancy level by utilizing two counter clickers for each entrance and exit to the Business Premises: one for incoming and one for outgoing patrons and guests. The current occupancy level shall be given to any San Jose Police Officer or Fire Inspector upon demand. TN



10. Waiting Lines

Permittee shall ensure that neither patrons nor guests waiting in the queue, nor rope nor any other mechanism used to control the queue, impedes pedestrian travel in the pedestrian walkway outside the Business Premises at any time. Queues shall also be arranged so as to prevent the blockage of neighboring businesses, minimize impacts on any adjacent uses, and prevent disturbances of the public peace. TN

11. Term of Public Entertainment Business Permit

Subject to Condition #13 below, the term of this Permit shall be from 2/05/2012 to 2/05/2016.  
TN

12. Renewal of Public Entertainment Business Permit

- A. To renew this Permit, at least twenty-one (21) business days prior to the expiration date stated in Condition No. 11 above, the Permittee shall file with the San Jose Police Department Permits Unit a new completed and executed Public Entertainment Business Permit application, along with all documentation requested on the face of the application, and shall submit payment in full of all the required fees. TN
- B. The Permittee shall respond promptly to all written and oral requests for information and further documentation requested by the San Jose Police Department as part of the application process. TN
- C. If the Permittee does not make a timely application for a new Public Entertainment Business Permit, or the fees for a Public Entertainment Business Permit are not paid, this Permit shall be deemed to have expired. The Permittee shall not be allowed to offer or provide Public Entertainment at the Business Premises until such time as an application for a Public Entertainment Business Permit has been filed with the Chief of Police; the fees for a Public Entertainment Business Permit, and if applicable, penalties for late renewal, have been paid; and, a new Public Entertainment Business Permit has been issued by the Chief of Police. TN

13. Conditional Use Permit

- A. The current Conditional Use Permit for the Business Premises is City of San Jose Planning Commission Resolution No 07-024, File No. CPA00-005-01. The terms and conditions of the Conditional Use Permit, including, but not limited to the Concurrent Conditions and Conditions Subsequent that are set out in the Conditional Use Permit, are hereby incorporated by reference and made a part of the terms and conditions of this Permit. This shall include any modification of the terms and conditions of the Conditional Use Permit made during the term of this Permit in accordance with the requirements of Title 20 of the San Jose Municipal Code or otherwise in accordance with Local, County, State and Federal law. TN
- B. In the event that the Conditional Use Permit is suspended in accordance with requirements of Title 20 of the San Jose Municipal Code or otherwise in accordance with law, this Permit shall be suspended for the time period of the suspension of the Conditional Use Permit. TN
- C. In the event of the revocation or nonrenewal of the Conditional Use Permit in accordance with requirements of Title 20 of the San Jose Municipal Code or otherwise in accordance with law, this Permit shall be revoked, invalid, and of no legal force or effect. TN
- D. In the event that the permit holder of the Conditional Use Permit fails to file a timely renewal application in accordance with the requirements of Title 20 of the San Jose Municipal Code, and the Conditional Use Permit expires, this Permit shall be deemed to be suspended until such time as the Conditional Use Permit is issued or renewed by the City of San Jose Planning Commission or by the City Council on appeal. TN
- E. The Conditional Use Permit for the Business Premises expires 5 years from the date of issuance, May 2, 2007. Therefore, the Conditional Use Permit expires on May 2, 2012. TN
- F. In order for a renewal application for a Conditional Use Permit to be considered timely, the holder of the Conditional Use Permit must file an application for renewal more than ninety (90) calendar days but less than one hundred eighty (180) calendar day prior to the expiration date of the Conditional Use Permit (May 2, 2012). Once the renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal becomes final. TN

14. Remedies for Violations of the Permit and Provisions of the San Jose Municipal Code

- A. Failure to comply with the stated terms and conditions of this Permit may result in suspension or revocation of this Permit, and/or other legal action by the City of San Jose to enforce the terms and conditions of this Permit and the requirements of the San Jose Municipal Code relating to the operation of the Business for which this Permit is issued and the use and maintenance of the Business Premises and parking sites used by patrons of the Business. TH
- B. The City is authorized to pursue all legal remedies, administrative, criminal, or civil, to address any violation of the San Jose Municipal Code and any violations of Local, County, State and Federal laws. The administrative remedies available to the City include, but are not limited to: administrative citations and fines (SJMC Chapter 1.15); administrative remedies including monetary penalties up to a maximum of two thousand five hundred (\$2500) dollars per day for each ongoing violation of the Municipal Code with the total administrative penalty not to exceed one hundred thousand (\$100,000) dollars exclusive of administrative costs, interest and restitution for compliance re inspections for any related series of violations (SJMC Chapter 1.14); and administrative nuisance abatement to remedy public nuisances, including administrative penalties up to two thousand five hundred (\$2,500) dollars per day for each day that the public nuisance occurs, with a maximum administrative penalty of one hundred thousand (\$100,000) dollars, exclusive of administrative costs and interest (SJMC Chapter 1.13). TH
- C. The Permittee shall be liable for the following: every violation of the requirements of Title 6 committed by the Permittee, all persons holding and required to hold a License issued by the San Jose Police Department in connection with this Permit, and all Permittee's employees and agents; any violation of Local, County, State and Federal laws committed by the Permittee and all persons holding and required to hold a License issued by the San Jose Police Department in connection with this Permit during the operation of the Business; and, any violation of Local, County, State and Federal laws committed by any employee or agent of the Public Entertainment Business for which this Permit is issued during the course and scope of their employment or agency-relationship with the Public Entertainment Business. TH

Public Entertainment Business Permit  
Page Page 9 of 11

15. Change in Name or Operation of Public Entertainment Business

Permittee shall immediately notify the Chief of Police, in writing, of any significant change in the business operations (i.e., operating under a new business plan or model) or any change in the information originally submitted with Permittee's application for this Permit pursuant to Section 6.02.050 of the San Jose Municipal Code. If requested by the Chief of Police, the Permittee shall submit any further information the Chief of Police deems necessary to complete his investigation and review of the information provided or necessary to protect the public health, safety and welfare. TN

16. Public Entertainment Business Permit Serving As Ownership/Management License

This Permit shall also serve as the License required by Section 6.60.060 of the San Jose Municipal Code for the natural person that applied for this Permit on behalf of the Business. Only one natural person shall be so covered by this Permit. All other owners and managers of the Business covered by this Permit are required to obtain separate Licenses. Accordingly, each reference to "Permittee" within this Permit shall also include the natural person that applied for this Permit on behalf of the Business and each reference to "Permit" shall also include the License required by Section 6.60.060 of the San Jose Municipal Code. In addition, such natural person shall be bound by the terms of this Permit in the same manner as the Permittee. TN

17. Ownership/Management Identification Required

Permittee shall ensure that, at all times while present at the Business Premises, every person holding, or required to hold a License issued by the San Jose Police Department in connection with this Permit, carries on his or her person an Ownership/Management identification card issued by the Chief of Police containing any information the Chief of Police deems necessary. TN

18. Transferability

This Permit is non-transferable. Any attempt by Permittee, or any other person, to assign or transfer this Permit shall render this Permit null and void. TN

Public Entertainment Business Permit  
Page Page 10 of 11

19. Additional Requirements for Public Entertainment Businesses Located in the Entertainment Zone (San Jose Municipal Code § 6.60.400)

- A. The days and hours of operation of the Public Entertainment Business for which this Permit is issued will be as follows:

| Days:                           | Hours:                             |
|---------------------------------|------------------------------------|
| <input type="radio"/> Monday    | 10 <sup>th</sup> - 2 <sup>AM</sup> |
| <input type="radio"/> Tuesday   | 10 <sup>th</sup> - 2 <sup>AM</sup> |
| <input type="radio"/> Wednesday | 10 <sup>th</sup> - 2 <sup>AM</sup> |
| <input type="radio"/> Thursday  | 10 <sup>th</sup> - 2 <sup>AM</sup> |
| <input type="radio"/> Friday    | 10 <sup>th</sup> - 2 <sup>AM</sup> |
| <input type="radio"/> Saturday  | 10 <sup>th</sup> - 2 <sup>AM</sup> |
| <input type="radio"/> Sunday    | 10 <sup>th</sup> - 2 <sup>AM</sup> |

TM (Permittee shall initial here.)

- B. The Permittee shall notify the Chief of Police in writing, of any change in hours or days of operation, and any change in maximum occupancy as certified by the San Jose Fire Department. TM
- C. The Permittee shall notify the Chief of Police in writing, of any anticipated change at least one working day in advance of the effective date of the expansion in the hours or days of operation, or expansion of the maximum occupancy. TM

CHRISTOPHER M. MOORE  
Chief of Police

Christine Zarate 3165  
Officer Christine Zarate #3165  
Administrative Officer  
Special Investigations / Vice Unit

ENDORSEMENTS ON THE PUBLIC ENTERTAINMENT BUSINESS PERMIT

I, the undersigned, have read and understand and agree to the above-stated terms and conditions.

If the signatory to this Permit is an individual signing on behalf of a firm, association, organization, partnership, business trust, company, corporation, public agency, school district, the state of California, or its political subdivisions or instrumentalities thereof, or is any other type of business entity, the signatory hereby warrants and represents that he or she is authorized to execute this Permit on behalf of his or her principals and that his or her signature serves to legally obligate and bind his or her principals to comply with the provisions of this Permit. Upon the City's request, Permittee shall provide the City with evidence reasonably satisfactory to the City confirming the foregoing representations and warranties.

Motiff Lounge

1/17/2012  
Date

By: 

Name: Teresa Nguyen

Title: Owner



SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARDCOPY

GO# SJ 2013-131380007 OPEN

MUNI-1 MUNICIPAL CODE VIOLATION

General Offense Information

Operational status: OPEN

Reported on: May-18-2013 (Sat.) 6

Occurred on: May-18-2013 (Sat.) 6

Approved on: May-18-2013 (Sat.) by: 3495 - GALEA RICHARD P

Report submitted by: 4020 - MILLER JUSTIN P

Org unit: BFC Downtowna Services Staff

Address: 389 S 1ST ST

Place: MOTIF

Municipality: SAN JOSE

District: DE Beat: 104 Grid: 189

Felony/Misdemeanor: MISDEMEANOR

Bias: NONE (no bias)

Family violence: NO

Offenses (Completed/Attempted)

Offense: # 1 MUNI-1 MUNICIPAL CODE VIOLATION - COMPLETED

Location: BAR/NIGHT CLUB

Offender suspected of using: NOT APPLICABLE



SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARDCOPY

CO# SJ 2013-131380007 OPEN

MUNI-1 MUNICIPAL CODE VIOLATION

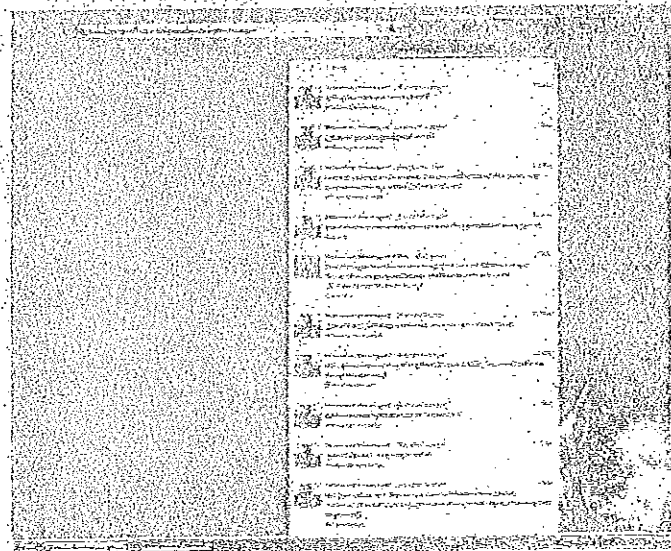
Related Image - ADDITIONAL DOCUMENTATION/EVIDENCE

Attachment Description:

Reference Number:

13-133-0004

VIA TWITTER



2013 MAY 19 AM 5:20  
SAN JOSE POLICE DEPT

PRAYER 330





SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARDCOPY

CO# SJ 2013-131380007 OPEN

MUNI-I MUNICIPAL CODE VIOLATION

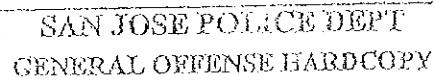
13-138-0003

VIA TRAYER

San Jose Police Department  
Municipal Code Violation  
Form 13-138-0003

Case Number: 13-138-0003  
Date: 06/03/2013  
Time: 10:00 AM  
Location: 1000 N. Market St.  
Officer: [Redacted]  
Subject: [Redacted]  
Status: [Redacted]  
Notes: [Redacted]

13-138-0003



GC# SJ 2013-131380007 OPEN

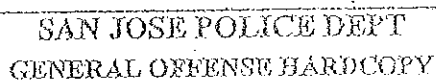
MUNI-1 MUNICIPAL CODE VIOLATION

12-155-0000

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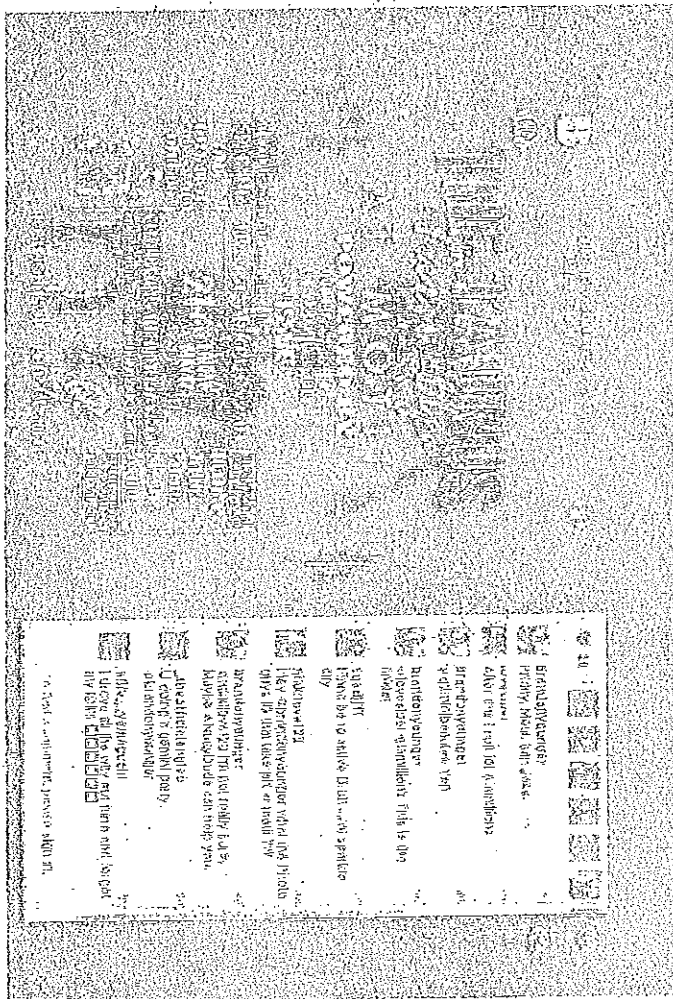
74E-552-2345



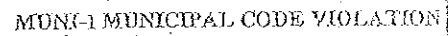
MUNI-1 MUNICIPAL CODE VIOLATION

13-132-00007

الحمد لله الذي جعلنا من عباده المخلصين



## REFERENCES



13-138-0007

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Primer 2.º 36



SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARD COPY

GO# SJ 2013-131380007 OPEN

MUNI MUNICIPAL CODE VIOLATION

Related Event(s)

CP SJ2013-131380007

Related Person(s)

1. Owner (Bus) # 1 - NGUYEN, TERESA

(Case Specific Information)

Sex: FEMALE

Race: Other Asian

Date of birth: [REDACTED]

Address: [REDACTED]

Phone Numbers

Business: (408) 279-1888

Cellular: [REDACTED]

Particulars

Occupation: CLUB OWNER

Employer: MOTIF LOUNGE 389 S 1ST ST

Ethnicity: OTHER ASIAN

Height: 5'01 Weight: 110 lbs.

Eye color: BROWN

Hair color: BLACK

Master Name Index Reference

Name: NGUYEN, TERESA

Sex: FEMALE

Race: Other Asian

Date of birth: [REDACTED]

Ethnicity: OTHER ASIAN

Address: [REDACTED]

Phone numbers

Business: (408) 279-1888

Cellular: [REDACTED]

Linkage factors

Resident status: NONRESIDENT

Age range: 30-49 YEARS

Access to firearm: NO

2. Other # 1 - YOUNGER, BRANDON JAMEL

(Case Specific Information)

Sex: MALE



SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARDCOPY

CD# SJ 2013-131380007 OPEN

MUNI-1 MUNICIPAL CODE VIOLATION

Race: African American

Date of birth: [REDACTED]

Address: [REDACTED]

Particulars

Ethnicity: AFRICAN AMERICAN

Height: 6'00 Weight: 205 lbs.

Eye color: BROWN

Hair color: BLACK

Hair style: Short

Facial hair color: Black

Facial hair style: Full Beard

Master Name Index Reference

Name: YOUNGER, BRANDON JAMEL

Sex: MALE

Race: African American

Date of birth: [REDACTED]

Ethnicity: AFRICAN AMERICAN

Address: [REDACTED]

Linkage factors

Resident status : RESIDENT

Statement taken : YES

Age range : 22-29 YEARS

Access to firearm : NO

Case Specific Clothing Details

Shirt: White / Tshirt

Shoes: Black, White / Sneakers

Related Business(es)

1. Premise # 1 - MOTIF LOUNGE

Address: 389 S 1ST ST

Municipality: SAN JOSE, California 95113-

District: DE Beat: Grid: 189

Phone number: (408) 279-1888

Type: BARS/NIGHT CLUBS/TAVERNS



SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARDCOPY

GO# SJ 2013-131336807 OPEN

MUNI-1 MUNICIPAL CODE VIOLATION

Related Text Page(s)

Document: SYNOPSIS

Author: 4020 - MILLER JUSTIN P

Related date/time: May-13-2013 (Sat) 6

SYNOPSIS:

On 05-18-13 at approximately 0006 hours, promoter permit violations occurred at Motif Lounge 389 S. 1st St. Night club owner Teresa Nguyen and promoter Brandon Younger were advised by police of the requirement to obtain a permit for event promotion in the city of San Jose prior to 05-18-13. Nguyen stated that the promoter would be canceled however, a premise check of Motif by the San Jose Police Downtown Services Unit (DSU) revealed that the warned promoter was present for a promoted event and was observed by officers to be hosting from the stage. DSU contacted both Nguyen and Younger to advise them of the violations of San Jose Municipal Code 6.58.150 - Operating Regulations And Permit Conditions and SJMC 6.58.200 - Event Promoter Permit Required. The incident was documented for administrative purposes.



SAN JOSE POLICE DEPT.  
GENERAL OFFENSE HARD COPY

GO# SJ 2013-131380007 OPEN

MOTIF - MUNICIPAL CODE VIOLATION

Related Text Page(s)

Document NARRATIVE

Author: 4020 - MILLER JUSTIN P

Related date/time: May-18-2013 (Sat)

NARRATIVE:

On 05-18-13 at approximately 0006 hours, Officers Pfeifer #3951, Marquardt #4096, Sgt. Galea #3495, and I were wearing plain clothes and working in the Downtown Services Unit (DSU) and conducted a premise check of Motif Lounge at 389 S. 1st St. We located a man who appeared to be Brandon Younger, a known promoter who was not permitted to promote in San Jose, in the upper level of the club which was maintained as restricted access. Sgt. Galea subsequently contacted club owner Teresa Nguyen to advise her of the violation and obtained a statement from her. Nguyen confirmed that Brandon Younger was present at the event.

We had prior knowledge that a promoter identified as "B Younger" was previously advised he needed a permit to promote night club events in San Jose. Officer Pfeifer and I located promotions for Motif from "B Younger," whose legal name is Brandon Younger, on internet social media. (See report by Officer Pfeifer). Through the social media we obtained several images of Brandon Younger so as to familiarize ourselves with his appearance.

San Jose Municipal Code 6.58.160 prohibits a permittee, such as night club owners, from employing a promoter who is not properly permitted to do so in the city of San Jose. SOMC 6.58.200 requires that event promoters must obtain an event promoter permit from the Chief of Police.

The other officers and I escorted Nguyen into the club in order to locate and interview Younger. We located Younger on the club stage microphone in hand speaking to the crowd along with the music. He appeared to be acting as a main event show. We contacted him on stage then stepped outside of the club in order to interview him.





SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARDCOPY

GO# SJ 2013-131380007 OPEN

MUNI-1 MUNICIPAL CODE VIOLATION

Related Text Page(s)

Document: NARRATIVE

Author: 4020 - MILLER JUSTIN P.

Related date/time: May-18-2013 (Sat)

NARRATIVE CONTINUED:

Younger met the criteria of an event promoter as specified in SSMC 6.62.40 by advertising to the public for the event and inviting high profile participants to the event. Both Nguyen and Younger were advised of the violations committed and acknowledged that they understood the policy and procedure for event promotions. Neither party had further questions regarding the process.



SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARDCOPY

GO# SJ 2013-131380007 OPEN

MUNI-I MUNICIPAL CODE VIOLATION

Related Text Page(s)

Document: STATEMENT

Author: 4020 - MILLER JUSTIN P

Subject: YOUNGER, BRANDON JAMEL

Related date/time: May-18-2013 (Sat)

STATEMENT OF BRANDON YOUNGER:

Younger stated that he had started the process of promoting the nights event for Motif on the Tuesday prior (05-14-13). He further stated that he ceased promotion after being advised by Sgt. Trayer that he needed a permit to conduct promotions for events in San Jose. Younger stated that he had arranged for multiple high profile sports associates to be at the event and that he was present not as a promoter but out of courtesy to those who flew in from out of state.

Brandon Younger's identity was confirmed through his California driver's license.



SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARD COPY

GC# SJ 2013-131380007 OPEN

MUNI-MUNICIPAL CODE VIOLATION

Related Text Page(s)

Document SUPPLEMENTAL

Author: 3951 - PFEIFER DANIEL

Related date/time: May-18-2013 (Sat)

On 05/17/2013, I was wearing plain clothes and driving an unmarked vehicle while assigned to the Downtown Services Unit (DSU). I was advised via an anonymous tip of a club promotion violation was to occur at Motif, and that a promoter, known as "B. Younger," had been allegedly involved in a shooting in San Francisco.

I conducted social media checks on Twitter.com, Facebook.com, and Instagram.com and located the following sites:

<http://instagram.com/brandonyounger>

<https://www.facebook.com/BrandonYoungerEvents>

<https://twitter.com/BYCevents>

<https://twitter.com/BrandonYounger>

All the above listed sites had information and pictures identifying "Brandon Younger" as the same person.

I took screen shots of images containing information of his promoting the event on Friday 05/17/2013, and printed them and will submit them by hand.

On 05/18/2013, at approximately 0006 hours, Officer Miller #4020, Officer Marquardt #4096, and I conducted a premise check at Motif night club located at 389 S. 1st St. Upon our arrival I walked upstairs to and identified "Brandon Younger" from his numerous social media site pictures seated, wearing a white t-shirt with a grey vertical America flag with a nude Marilyn Monroe with nipples and vagina covered by the stripes of the flag, dark grey jeans, and black shoes with a white sole.

At approximately 0112 hours, we returned to Motif night club (SJPD Case 13-138-0075). I went inside to attempt to contact Brandon Younger. I located him standing on stage. I observed that he had a microphone in his hand and was speaking to the crowd. I was unable to tell what he was saying due to the volume of the music. I took a short video of Brandon Younger on stage. I uploaded the video to DCS in the "Other/Special Case" folder.

Refer to Officer Miller's report for additional information.



SAN JOSE POLICE DEPT  
GENERAL OFFENSE HARDCOPY

GO# SJ 2013-J31380007 OPEN

MUNI-1 MUNICIPAL CODE VIOLATION

\*\*\* END OF HARDCOPY \*\*\*

PROOF OF SERVICE

CASE NAME: Teresa Nguyen (Owner) dba Motif Lounge

I, the undersigned declare as follows:

I am a citizen of the United States, over 18 years of age, employed in Santa Clara County, and not a party to the within action. My business address is 201 W. Mission Street, San José, CA 95110, and is located in the county where the service described below occurred.

On July 12, 2013, I caused to be served the within:

• Appeal Packet Containing:

- o CD Video of Date of offense (iTunes video formatted)
- o Proof of Service on Notice of Intended Action.
- o Appeal letter to Chief Hober; Documents in Support of Appeal (Bates Stamped Numbers MOTIF0001 -- 42)

☒ by PERSONAL DELIVERY, with a copy of this declaration, by causing to be personally delivered a true copy thereof to the person at the address set forth below.

Addressed as follows:

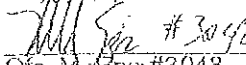
Teresa Nguyen  
389 South First St.  
San Jose, CA 95113

☒ by MAIL, with a copy of this declaration, by depositing them into a sealed envelope, with postage fully prepaid, and causing the envelope to be deposited for collection and mailing on the date indicated above.

I further declare that I am readily familiar with the City of San José's business practice for collection and processing of correspondence for mailing with the United States Postal Service. Under the business practice, this correspondence would be deposited with the United States Postal Service on the date above in the ordinary course of business. I further declare that the name and address on the envelope appear as follows:

Richard D. Warren  
Attorney  
929 Fresno Avenue  
Berkeley, CA 94707

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 12, 2013, at San Jose, California.

  
Off. M. Epp #3048  
San Jose Police Department  
Special Investigations/Vice Unit

PROOF OF SERVICE  
Third Proof of Service for 071113 for Packet

MOTIF000042

CIN EXHIBIT 6 C



SAN JOSE POLICE DEPT  
NARRATIVE TEXT HARDCOPY

SO# SJ 2013-131380007 COMPLAINT FILED

MUNI-1 MUNICIPAL CODE VIOLATION

MUNICIPAL CODE VIOLATION

SYNOPSIS

Narrative: On 5-18-13, I was assigned to the Downtown Services Unit (DSU) working in plain clothes. One of DSU's responsibilities is to ensure downtown nightclubs are in compliance of city permits. The City of San Jose has a promoters ordinance which regulates promoters who work for nightclubs.

I received information Motif Nightclub was in violation of the promoters ordinance. I asked Sgt. Trayer to follow up on the information. He found Motif in violation of the promoters ordinance and communicated to Motif's owner, Teresa Nguyen, as well as the promoter "B Younger."

On the afternoon of 5-18-13, Ofc. Dan Pfeifer checked "B Younger's" Facebook page and it showed he was still promoting at Motif. DSU officers and I went to Motif to confirm if he was there. DSU officers observed "B Younger" inside the nightclub. I made contact with Nguyen to explain the violation. She told me that she texted "B Younger" and told him not to arrive at Motif. I asked her to show me her text messages. She pulled out her phone and showed me her conversation with "B Younger." On 5-18-13, she texted him and asked if he was coming. He said he was and that "his girl" was on her way. Theresa said ok and "her girl" was already at the door. Teresa also told "B Younger" that she told people that "this was her party and not his." He replied, "Ok."

I immediately told her she was lying to me. Nguyen never told "B Younger" not to show up. From the above text messages, she confirmed he was coming. Further, they both had girls who would sit together at the door and collect money. That is common for nightclubs to have an agreement with promoters that they will share the front door profits.

It should be noted I saw two females sitting at the door collecting money. Usually there is only one girl.

Author: GALEA RICHARD P

Related date: May-18-2013 (Sat.)

\*\*\* END OF HARDCOPY \*\*\*

May 15, 2013, 12:53 PM MSF EXHIBIT 1

Brandon call me pls

I just called u

May 15, 2013, 1:17 PM

DJ Mario E 10pm

11:30pm

DJ Rodd 11:30pm

12:30pm

DJ Chillin 12:30pm

1:30am

May 16, 2013, 5:32 PM

Teresa I got player Josh  
wants platinum package 2  
patron, 2 Hennessy, and 2  
rose.

OK full price

Ok

Ok full on

Ok

Send me all the tables  
book

Is Josh want downstairs?

Yes. He has 2 tables. I  
already sent it to Umer

May 17, 2013, 6:42 PM

U not coming in tonight  
right?

I told the staff it's a  
party

May 17, 2013, 10:35 PM

Hey can u let me in side  
door?



MOTIF  
INSTAGRAM  
POST



100-443887-100

motifsl -> DESIRE Friday @ MOTIF LOUNGE  
v -> A Get Info @ MOTIFLOUNGE.COM<<<  
vip -> Bottoms @ 408.279.1888<<< #sl#motif

SJAHB000058

FOI





# MOTIF EXHIBIT 3

Page 1 of 1

Hober, David

From: rickwarren [rickwarren@pacbell.net]  
Sent: Wednesday, July 31, 2013 9:22 PM  
To: Hober, David; Fisher, Kevin; Trayer, Todd  
Cc: 'Teresa Nguyen'  
Subject: Teresa Nguyen dba Motif: City Proceeding to Suspend Entertainment Permit for Unpermitted Promoter  
Attachments: Dep Chief Hober ( Supplemental Evidence ) 073113.ltr.pdf; Motif's Exhibit 3 (Complete Exchange of Text Message btw Nguyen and Younger) 042213 to 051713.pdf

Dear Chief Hober:

Attached is my letter and Motif's supplemental evidence in connection with the July 24<sup>th</sup> hearing. The evidence is the complete exchange of e-mail messages between Nguyen and Younger from the date the May 17<sup>th</sup> event was first discussed through May 17.

I am away from my office until August 25<sup>th</sup>, but I am reachable by e-mail although I will be 10 hours ahead of Pacific time.

Many thanks for considering the attachments. Please reply to acknowledge your receipt of this email and the attachments.

Respectfully submitted,

Rick Warren

Richard D. Warren  
Mediator, Arbitrator & Attorney  
929 Fresno Avenue  
Berkeley, CA 94707  
Tel: 510-528-4423  
Cell: 415-305-4980  
FAX: 510-217-4393  
E-mail: rickwarren@pacbell.net  
Web: www.abo-lawyer.com

8/5/2013

SJAHB000061

Richard D. Warren  
Attorney at Law

929 Fresno Avenue, Berkeley CA 94707  
Tel: 510.528.4423 Fax: 510.217.4383  
[rick.warren@pachell.net](mailto:rick.warren@pachell.net)  
[www.abc-lawyer.com](http://www.abc-lawyer.com)

By E-mail only to [David.hober@saniosera.gov](mailto:David.hober@saniosera.gov)

July 31, 2013

Deputy Chief David Hober  
San Jose Police Department  
855 North San Pedro  
4<sup>th</sup> Floor, Room 448  
San Jose, CA 95110

RE: June 13, 2013 Notice of Intended Action Against  
Teresa Nguyen  
Dba Motif Lounge  
389 South First St.  
San Jose, CA 95113  
SUPPLEMENTAL EVIDENCE FOR HEARING ON MAY 24, 2013

Dear Chief Hober:

I am the attorney for Ms. Teresa Nguyen, owner of the Motif Lounge, and I appeared with Ms. Nguyen at the July 24<sup>th</sup> Hearing. At the conclusion of the hearing, we agreed that we would provide the complete exchange of the texts between Ms. Nguyen and Mr. Younger related to the cancelled event scheduled for May 17<sup>th</sup>. You may recall that Sgt. Galea testified about seeing text messages shown him by Ms. Nguyen about "his girl and her girl."

Attached is Motif's Exhibit 3 that shows the complete exchange of text messages between Ms. Nguyen and Mr. Younger starting with the initial discussion of the event on April 22 to the comment on May 19 after which I have redacted the messages because they do not relate, directly or indirectly, to the May 17<sup>th</sup> event.

Please note that the messages on May 11 about "my door girl" was before Sgt. Trayer contacted Ms. Nguyen and Mr. Younger to tell them Motif could not have Mr. Younger promote the event on May 17<sup>th</sup>. Therefore, we submit that the messages on May 11<sup>th</sup> do not contradict in any manner Ms. Nguyen's position that (1) she did everything she could to cancel the event, and (2) she did not pay Mr. Younger, directly or indirectly, anything in connection with the May 17<sup>th</sup> event.

We believe you should find that Ms. Nguyen has not violated the provisions of her Entertainment Permit as alleged in the City notice, and she is not subject to any penalty.

Dep. Chief Hober

July 31, 2013

Page 2

Hearing Involving Teresa Nguyen, dba Molif

I will be out of the country on vacation from August 1 to August 25. If you issue your decision during that period, please send it to me by e-mail so there is no delay in my receipt.

If you have any questions, please let me know. Many thanks for your consideration.

Respectfully,



Richard D. Warren

Cc: Sgt. Todd Trayer (by e-mail)  
Kevin Fisher (by e-mail)

1:34 PM  
1:34 PM

Apr 22, 2013, 1:02 PM

Hey! When are u ready to  
get it back going? My  
friend from the Cincinnati  
bengals NFL team wants  
to do his party May 17th.  
Let me know. I've  
revamped my whole  
program and all my people  
are ready to party.

Apr 22, 2013, 7:32 PM

Okie good but it's Friday?

Yes. Friday May 17th.

Ok 65% done?

Yes we can start there and  
if things go well we'll  
renegotiate, k?

Apr 22, 2013, 7:45 PM

1:34 PM  
1:34 PM  
Text Messages

Apr 22, 2013, 7:45 PM

I may come out tonight I  
need a fable. 2 bottles of  
goose

Brandon is 5/27 confirm 22

Ohh ok make flyer and send to me pls  
Also make sure Dru book have to bring their own mixer and should b play decent music pls

May 1, 2013, 12:00 PM

Brandon can jump on

**Abstract**



AT&T 12:01 PM 73%  
Messa (95) **Brandon You...** Edit

May 1, 2013, 12:00 PM

Brandon can u jump on  
this Friday?

With who?

I might be in LA

May 1, 2013, 12:26 PM

Just you guys

Isn't that Mike's Friday?

Yes but idk what happen  
to him no offer no  
promotion

May 2, 2013, 12:12 PM

Mike is promoting the  
party still.

May 2, 2013, 4:16 PM

Are u guys still interested  
in doing 18+ on  
Thursdays? I have Son



Text Message



SJAHB000066

May 2, 2013, 12:12 PM

Mike is promoting the party still.

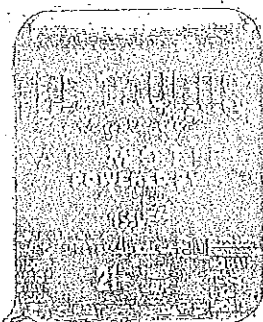
May 2, 2013, 4:16 PM

Are u guys still interested in doing 18+ on Thursdays? I have San Jose state student that can get good crowd out. Willing to do door split too.

May 4, 2013, 11:02 AM

Ok who do I contact?

May 6, 2013, 7:35 AM



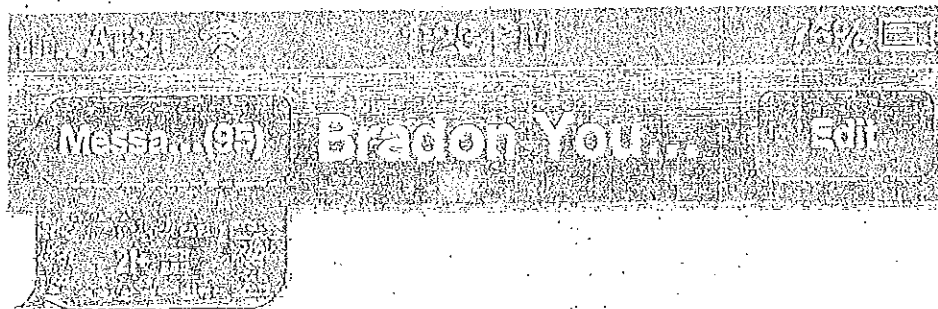
May 11, 2013, 2:57 PM

I got a someone that



Text Message





May 11, 2013, 2:57 PM

I got a someone that  
wants 2 Hennessy's, a  
patron, and rosé. What  
kind of deal can I get?

Tonight?

Next Friday for my party.

May 11, 2013, 3:20 PM

I can discount \$100 off

Ok

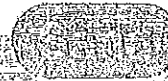
They may get more bottles  
too

May 11, 2013, 3:35 PM

Ok cool  
Can u pls select the D as  
well? I like D'shaft



Text Message



May 11, 2013 4:54 AM 100%  
Message: Braden You... Edit

They may get more bottles too

May 11, 2013, 3:35 PM

Ok cool

Can u pls select the DJ as well? I like DJ shan

I gave my door girl instructions for the night

Ok let her know my door girl going to b there too

May 13, 2013, 12:00 AM

I'm here tonight. Can I get goose for \$150?

Ok

May 15, 2013, 12:55 PM

Brandon call me pls

I just called u



Text Message



4/15/13 11:17 AM 1801 AM 11:17 AM  
Messa (95) Bradon You... Edit

May 15, 2013, 12:55 PM

Brandon call me pls

I just called u

May 15, 2013, 1:17 PM

DJ Mario E 10pm-  
11:30pm  
DJ Rodd 11:30pm-  
12:30pm  
DJ Chillin 12:30pm-  
1:30am

May 16, 2013, 5:32 PM

Teresa I got player Josh  
wants platinum package. 2  
patron, 2 Hennessy, and 2  
rose.

Ok full price

Ok

Send me all the tables

Text Message

Massachusetts (93) **Bradon You...** Edit

May 17, 2013, 10:35 PM

Hey can u let me in side door?

I'm at the side door

May 19, 2013, 7:59 PM